

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

ROBERT TURNER,

Plaintiff,

V.

UNITED STATES OF AMERICA,

Defendant.

Case No. 19-cv-700-JPG

**ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT
UNITED STATES OF AMERICA**

The United States of America, by its attorneys, Steven D. Weinhoeft, United States Attorney for the Southern District of Illinois, and Nicholas J. Biersbach, Assistant United States Attorney, responds to Plaintiff's Complaint as follows:

TORT CLAIM

The United States admits the Federal Tort Claims Act (“FTCA”) provides a limited waiver of sovereign immunity and further provides for a cause of action for tort claims “caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment” 28 U.S.C. §§ 1346(b)(1), 2671 *et seq.* The United States denies it is liable to Plaintiff pursuant to the FTCA. The remaining allegations in this paragraph are legal conclusions that require no response. To the extent a response is required with regard to any remaining allegations in this paragraph, the United States denies said allegations.

PARTIES

1) The United States admits the FTCA provides a limited waiver of sovereign immunity and further provides for a cause of action for tort claims “caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment” 28 U.S.C. §§ 1346(b)(1), 2671 *et seq.* The United States denies it is liable to

Plaintiff pursuant to the FTCA. The remaining allegations in this paragraph are legal conclusions that require no response. To the extent a response is required with regard to any remaining allegations in this paragraph, the United States denies said allegations.

2) During the times relevant to the allegations in the Complaint, the United States admits Plaintiff was in the custody of the U.S. Marshals Service. Furthermore, the United States admits that, while in the custody of the U.S. Marshals service during the periods relevant to the allegations in the Complaint, Plaintiff was housed at the White County, Illinois Jail, pursuant to an intergovernmental agreement between the County and the U.S. Marshals Service. The United States denies any remaining allegations in this paragraph of the Complaint and the insinuation that the United States is liable to Plaintiff under the FTCA in relation to the conduct alleged in the Complaint.

FACTS

1) The United States admits the U.S. Marshals Service possesses information reflecting that, on July 10, 2017, Plaintiff underwent a tuberculosis screening.

2) The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph of the Complaint and, accordingly, the allegations are denied.

3) The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph of the Complaint and accordingly, the allegations are denied.

4) The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph of the Complaint and, accordingly, the allegations are denied.

5) The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph of the Complaint and, accordingly, the allegations are denied.

6) The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph of the Complaint and, accordingly, the allegations are denied.

7) The United States lacks knowledge or information sufficient to form a belief about the

truth of the allegations in this paragraph of the Complaint and, accordingly, the allegations are denied.

INJURIES

The United States denies it is liable to Plaintiff under the FTCA in relation to the allegations of the Complaint. The United States, by and through the U.S. Marshals Service, lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in this paragraph of the Complaint and, accordingly, the remaining allegations are denied.

RELIEF

Plaintiff's Complaint includes a prayer for relief that requires no response. To the extent any further response is required, the United States denies the allegations of this paragraph, denies Plaintiff is entitled to any relief, and denies each and every other allegation in the Complaint except as specifically admitted.

AFFIRMATIVE DEFENSES OF DEFENDANT UNITED STATES OF AMERICA

As further answer and defense, the United States of America states and avers as follows:

FIRST DEFENSE

Plaintiff failed to submit an administrative claim to the U.S. Marshals Service in relation to the allegations in the Complaint prior to bringing suit. *See* 28 U.S.C. § 2675(a).

SECOND DEFENSE

Plaintiff's alleged injuries were caused, in whole or in part, by the acts or omissions of other parties, persons, or entities, their servants, agents, representatives, or employees, who are not agencies or employees of the United States and for whom the United States has no liability pursuant to the FTCA. As such, any determination of fault should be apportioned amongst those responsible, whether or not parties to the current action.

THIRD DEFENSE

Plaintiff's claim is time-barred by the FTCA's statute of limitations that requires the submission of an administrative claim to the appropriate Federal agency within 2 years after such claim accrues. *See* 28 U.S.C. § 2401(b).

FOURTH DEFENSE

Plaintiff has failed to submit a medical professional's report stating there are reasonable and meritorious grounds for bringing this FTCA medical negligence suit and an affidavit from Plaintiff related to that report as provided under 735 ILCS 5/2-622.

FIFTH DEFENSE

The FTCA provides a limited waiver of sovereign immunity and further provides for a cause of action for tort claims "caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment" 28 U.S.C. § 1346(b)(1). The FTCA defines employees under the Act as including officers and employees of any federal agency but excludes "any contractor with the United States." 28 U.S.C. § 2671. Pursuant to 28 U.S.C. § 2671, the United States cannot be held liable under the FTCA for the conduct of medical staff at the White County, Illinois Jail.

Respectfully submitted,

STEVEN D. WEINHOFER
United States Attorney

s/ Nicholas J. Biersbach
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Certificate of Service

I hereby certify that on February 28, 2020, I electronically filed the foregoing **ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT UNITED STATES OF AMERICA** with the Clerk of Court using the CM/ECF system which will send notification of such filing(s) to the following:

None

and I hereby certify that on February 28, 2020, I also mailed by United States Postal Service, the document to the following non-registered participant:

Robert Turner
13717-025
FCI Gilmer
Inmate Mail/Parcels
P.O. Box 6000
Glenville, WV 26351

s/ Nicholas J. Biersbach
NICHOLAS J. BIERSBACH
Assistant United States Attorney